IN THE HIGH COURT JUDICATURE AT MADRAS

DATED: 03/11/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.(PD).No.648 of 2004
and C.R.P. (PD). No. 649 of 2004
and
CMP No.6420 of 2004

B.Kamaraj .. Petitioner in both
CRPs
-Vs-

1. Elumalai
2. Chinnammal
3. Parvathi
4. Muruvayee
5. Nagammal
6. Ayyamperumal
7. Anandan
8. Lakshmi .. Respondents in both
CRPs

Both these civil revision petitions are preferred under Article 227 of the Constitution of India against the fair and decreetal orders dated 12.12.2003 made in I.A.Nos.1327 and 1328 of 2003 in O.S.No.35 of 2002 on the file of the District Munsif, Sankari.

!For Petitioner : Mr.P.Jagadeesan

^For Respondents : No appearance

:COMMON ORDER
The orders of the learned District Munsif, Sankari, dismissing two interlocutory applications filed by the petitioner/plaintiff one to reopen the suit and the other to recall D.W.1 for further crossexamination by the plaintiff's side in a suit for permanent injunction, are being challenged in these revision petitions.
2. Despite service of notice, the respondents defendants did not appear before this Court.
3. It was a suit for permanent injunction. From the available materials and the submissions made by the learned Counsel for the petitioner, it could be seen that after the evidence was over, the matter was posted for arguments. At that juncture, the instant applications were filed by the plaintiff, one to reopen the case and the other to recall D.W.1 for further cross-examination. An opportunity was given to the opposite party namely the

defendants to file their counter. The lower Court dismissed both the applications on the ground that sufficient cross-examination of D.W.1 was made by the plaintiff's side for two days, and apart from that, the points to be raised at the time of cross-examination, were covered even early, and hence, there was no necessity either to reopen the case or to recall D.W.1.

4. The affidavits in support of the applications before the lower Court are perused. The reason for reopening the case and for recalling D.W.1 has been specifically stated therein. It has also been made clear that a few questions as to the patta proceedings were omitted to be asked, and certain documents which were filed by the defendants, but omitted to be marked by them, were to be marked. Under such circumstances, it cannot be stated that it was either to drag on the proceedings or it would cause prejudice to the other party. The reasons adduced by the lower Court for dismissing the applications cannot be sustained, and this Court is of the considered opinion that not only the merits of the case could be brought by reopening the suit and recalling D.W.1, but also the interest of justice would require so.

5. Therefore, both the civil revision petitions are allowed, setting aside the orders of the lower Court. The lower Court is directed to reopen the case, recall D.W.1 and give an opportunity to the petitioner to cross-examine the said witness on a date fixed by that Court. The petitioner before this Court is also directed not to seek any adjournment except to cross examine D.W.1 on the date fixed by the lower Court. The lower Court is also directed to dispose of the matter within a period of two months herefrom. No costs. Consequently, connected CMP is closed.

Index: yes
Internet: yes

To:
The District Munsif
Sankari

nsv/

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